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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

C. BROOKS CUTTER,

Plaintiff,

v.

FOOD AND DRUG ADMINISTRATION
and DEPARTMENT OF HEALTH AND
HUMAN SERVICES,

Defendants.

No. 1:09-cv-00107-LJO-DLB

**PARTIES' STIPULATION TO
MODIFY ORDER OF MARCH 27,
2009, AND RESET STATUS
CONFERENCE**

Defendants, the United States Food and Drug Administration ("FDA") and Department of Health and Human Services, by and through their attorneys, Lawrence G. Brown, Acting United States Attorney, and Yoshinori H. T. Himel, Assistant United States Attorney; and Plaintiff, C. Brooks Cutter, respectfully request that this Court modify the schedule set forth in the Court's Order dated March 27, 2009.

As indicated in the parties' first Stipulation to Stay Action and Reset Status Conference, dated March 23, 2009, the parties agreed to stay the action until August 11, 2009, to allow FDA time to process Plaintiff's FOIA request once it had reached the front of the complex queue in FDA's Center for Devices and Radiological Health. Accordingly, the parties agreed that Plaintiff would have two (2) weeks from the date of receipt of the last document produced by FDA to decide whether to challenge any of FDA's withholdings. If

1 Plaintiff decided to challenge any of FDA's withholdings, FDA would provide a Vaughn
2 index within thirty (30) calendar days after Plaintiff gave defense counsel of record and
3 FDA's Office of Chief Counsel a notice of his intent to challenge the withholdings.

4 FDA produced the last document to Plaintiff on August 11, 2009. After the documents
5 were produced, Plaintiff and other parties who received the documents informally raised
6 questions to FDA regarding the production. FDA is currently trying to address those
7 questions, but may not be able to do so before August 25, 2009, which is the date by which
8 Plaintiff would be required to challenge FDA's withholdings under the March 27 Court
9 Order.

10 The parties agree to extend the time that Plaintiff has to challenge FDA's withholdings
11 until September 22, 2009, to allow FDA time to address the questions raised about the
12 documents that were produced and to allow Plaintiff to make an informed determination as to
13 whether to challenge FDA's withholdings. If Plaintiff decides to challenge FDA's
14 withholdings, FDA agrees to produce a Vaughn index within thirty (30) calendar days after
15 Plaintiff gives defense counsel of record and FDA counsel a notice of his intent to challenge
16 the withholdings.

17 Based upon the foregoing, the parties move this Court to enter an order granting the
18 Plaintiff until September 22, 2009, to challenge FDA's withholdings, consistent with the
19 terms set forth in this stipulation, and to continue the status conference currently set by Order
20 dated March 27, 2009, from September 22, 2009 to a date convenient to the Court.

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22
23 Dated: August 24, 2009

/s/ C. Brooks Cutter
C. BROOKS CUTTER

24
25 Dated: August 21, 2009

LAWRENCE G. BROWN
Acting United States Attorney

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27 By: /s/ Y H T Himel
YOSHINORI H. T. HIMEL
28 Assistant U.S. Attorney

Of Counsel:

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ORDER

Good cause appearing, Plaintiff is granted until September 22, 2009, to challenge FDA's withholdings. The status conference presently set for 9:00 a.m. on September 22, 2009, is CONTINUED to 11/10/2009 at 9:30 am., before Magistrate Judge Beck.

IT IS SO ORDERED.

Dated: August 31, 2009

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE